

Executive Summary – Enforcement Matter – Case No. 51307
Nebular 2000, Inc. dba Kwik Stop
RN102887502
Docket No. 2015-1449-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Kwik Stop, 418 Corinth Street, Dallas, Dallas County

Type of Operation:

Convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: January 22, 2016

Comments Received: No

Penalty Information

Total Penalty Assessed: \$17,308

Amount Deferred for Expedited Settlement: \$3,461

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$407

Total Due to General Revenue: \$13,440

Payment Plan: 35 payments of \$384 each

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: July 7, 2015

Date(s) of NOE(s): August 31, 2015

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Nebular 2000, Inc. dba Kwik Stop
RN102887502
Docket No. 2015-1449-PST-E

Violation Information

1. Failed to renew a previously issued underground storage tank (“UST”) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on June 30, 2013 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received one delivery of fuel without a delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
3. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
4. Failed to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid reaches a preset level no higher than 95% capacity level for the tank. Specifically, overfill prevention equipment was not installed [30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2)].
5. Failed to designate at least one Class A, Class B, and Class C operator for the Facility [30 TEX. ADMIN. CODE § 334.602(a)].
6. Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)(B)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

a. Immediately:

- i. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form; and

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ii. Begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel.

b. Within 30 days:

i. Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs;

ii. Install an overfill prevention device for the UST system; and

iii. Ensure that at least one Class A, Class B, and Class C operator is designated for the Facility.

c. Within 45 days, submit written certification to demonstrate compliance with a. and b.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Keith Frank, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-1203; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483

TCEQ SEP Coordinator: N/A

Respondent: Sherwin Allen, Owner, Kwik Stop, 25557 Ramrock Drive, Porter, Texas 77365-6326

Respondent's Attorney: N/A



Policy Revision 4 (April 2014)

Penalty Calculation Worksheet (PCW)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	8-Sep-2015	Screening	16-Sep-2015	EPA Due	
	PCW	22-Sep-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	Nebular 2000, Inc. dba Kwik Stop		
Reg. Ent. Ref. No.	RN102887502		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	51307	No. of Violations	6
Docket No.	2015-1449-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Keith Frank
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 **\$12,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **25.0%** Adjustment Subtotals 2, 3, & 7 **\$3,000**

Notes Enhancement for one order without a denial of liability.

Culpability **No** **0.0%** Enhancement Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 **\$0**

Economic Benefit	Total EB Amounts	\$2,390	0.0% Enhancement*	Subtotal 6	\$0
	Estimated Cost of Compliance	\$3,780			

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal **\$15,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage.

15.4% Adjustment **\$2,308**

Notes Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1 and 3.

Final Penalty Amount **\$17,308**

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty **\$17,308**

DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

20.0% Reduction Adjustment **-\$3,461**

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY

\$13,847

Screening Date 16-Sep-2015

Docket No. 2015-1449-PST-E

PCW

Respondent Nebular 2000, Inc. dba Kwik Stop

Policy Revision 4 (April 2014)

Case ID No. 51307

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887502

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one order without a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 25%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 25%

Screening Date 16-Sep-2015

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PCW

Respondent Nebular 2000, Inc. dba Kwik Stop

Policy Revision 4 (April 2014)

Case ID No. 51307

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887502

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description

Failed to renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on June 30, 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3

808 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$3,750

Three annual events are recommended based on documentation of the violation from the June 30, 2013 delivery certificate expiration date to the September 16, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	x (mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$234

Violation Final Penalty Total \$5,409

This violation Final Assessed Penalty (adjusted for limits) \$5,409

Economic Benefit Worksheet

Respondent Nebular 2000, Inc. dba Kwik Stop

Case ID No. 51307

Reg. Ent. Reference No. RN102887502

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	7-Jul-2015	4-Jun-2016	0.91	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration and obtain a valid TCEQ delivery certificate. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$200	30-Jun-2013	7-Jul-2015	2.94	\$29	\$200	\$229
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to accurately prepare and submit an updated UST registration and obtain a valid TCEQ delivery certificate. Date Required is the expiration date of the delivery certificate. Final Date is the investigation date.

Approx. Cost of Compliance

\$300

TOTAL

\$234

Screening Date 16-Sep-2015

Docket No. 2015-1449-PST-E

PCW

Respondent Nebular 2000, Inc. dba Kwik Stop

Policy Revision 4 (April 2014)

Case ID No. 51307

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887502

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description

Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received one delivery of fuel without a delivery certificate.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 3.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$24,250

\$750

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$750

One single event is recommended for accepting one fuel delivery.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,082

This violation Final Assessed Penalty (adjusted for limits) \$1,082

Economic Benefit Worksheet

Respondent Nebular 2000, Inc. dba Kwik Stop
Case ID No. 51307
Reg. Ent. Reference No. RN102887502
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit is included in violation no. 1.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 16-Sep-2015

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PCW

Respondent Nebular 2000, Inc. dba Kwik Stop

Policy Revision 4 (April 2014)

Case ID No. 51307

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887502

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix
Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3

365

Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

Three single events are recommended for the three USTs at the Facility.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Extraordinary

Ordinary

N/A

x

(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Estimated EB Amount \$2,079

Statutory Limit Test

Violation Final Penalty Total \$5,409

This violation Final Assessed Penalty (adjusted for limits) \$5,409

Economic Benefit Worksheet

Respondent Nebular 2000, Inc. dba Kwik Stop

Case ID No. 51307

Reg. Ent. Reference No. RN102887502

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$1,980	7-Jul-2014	7-Jul-2015	1.00	\$99	\$1,980	\$2,079
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to provide financial assurance for three USTs (\$660 per tank). Date Required is one year prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$1,980

TOTAL

\$2,079

Screening Date 16-Sep-2015

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PCW

Respondent Nebular 2000, Inc. dba Kwik Stop

Policy Revision 4 (April 2014)

Case ID No. 51307

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887502

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.51(b)(2)(C) and Tex. Water Code § 26.3475(c)(2)

Violation Description

Failed to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid reaches a preset level no higher than 95% capacity level for the tank. Specifically, overfill prevention equipment was not installed.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

71 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,250

One quarterly event is recommended based on documentation of the violation from the July 7, 2015 investigation to the September 16, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$32

Violation Final Penalty Total \$1,803

This violation Final Assessed Penalty (adjusted for limits) \$1,803

Economic Benefit Worksheet

Respondent Nebular 2000, Inc. dba Kwik Stop
Case ID No. 51307
Reg. Ent. Reference No. RN102887502
Media Petroleum Storage Tank
Violation No. 4

Percent Interest 5.0
Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
Item Description No commas or \$

Delayed Costs

Equipment	\$500	7-Jul-2015	4-Jun-2016	0.91	\$2	\$30	\$32
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install overfill prevention devices for the UST system. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$32

Screening Date 16-Sep-2015

Docket No. 2015-1449-PST-E

PCW

Respondent Nebular 2000, Inc. dba Kwik Stop

Policy Revision 4 (April 2014)

Case ID No. 51307

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887502

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 334.602(a)

Violation Description

Failed to designate at least one Class A, Class B, and Class C operator for the Facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential		X	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix
Notes

Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

71

Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,250

One quarterly event is recommended based on documentation of the violation from the July 7, 2015 investigation to the September 16, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$1,803

This violation Final Assessed Penalty (adjusted for limits) \$1,803

Economic Benefit Worksheet

Respondent Nebular 2000, Inc. dba Kwik Stop

Case ID No. 51307

Reg. Ent. Reference No. RN102887502

Media Petroleum Storage Tank

Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$500	7-Jul-2015	4-Jun-2016	0.91	\$23	n/a	\$23
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to ensure that one Class A, Class B, and Class C operator is designated for the Facility.
Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$23

Screening Date 16-Sep-2015

Docket No. 2015-1449-PST-E

PCW

Respondent Nebular 2000, Inc. dba Kwik Stop

Policy Revision 4 (April 2014)

Case ID No. 51307

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887502

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 6

Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)(1)(B)

Violation Description

Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

71 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$1,803

This violation Final Assessed Penalty (adjusted for limits) \$1,803

Economic Benefit Worksheet

Respondent Nebular 2000, Inc. dba Kwik Stop

Case ID No. 51307

Reg. Ent. Reference No. RN102887502

Media Petroleum Storage Tank

Violation No. 6

Percent Interest 5.0
Years of Depreciation 15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	7-Jul-2015	4-Jun-2016	0.91	\$23	n/a	\$23
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain the required UST records. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$23

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PENDING Compliance History Report for CN604192518, RN102887502, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN604192518, Nebular 2000, Inc. **Classification:** SATISFACTORY **Rating:** 30.00

Regulated Entity: RN102887502, Kwik Stop **Classification:** SATISFACTORY **Rating:** 30.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 418 CORINTH ST DALLAS, TX 75207-4908, DALLAS COUNTY

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 24715

Compliance History Period: September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

Date Compliance History Report Prepared: September 16, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 16, 2010 to September 16, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Keith Frank

Phone: (512) 239-1203

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- 3) If **YES** for #2, who is the current owner/operator? NEBULAR 2000 INC OWNER OPERATOR since 7/12/2012
DEARING, DAVID OWNER since 1/1/1800
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? SAO LIM CORPORATION, OWNER, 6/1/2006 to 7/11/2012
LIM, SAO LIEN, OPERATOR, 6/1/2006 to 7/11/2012
- 5) If **YES**, when did the change(s) in owner or operator occur? 7/12/2012

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

1 Effective Date: 07/26/2012 ADMINORDER 2011-1449-PST-E (Findings Order-Default)

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
5C THSC Chapter 382 382.085(b)

Description: Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(C)(i)
30 TAC Chapter 115, SubChapter C 115.242(3)(C)(ii)
30 TAC Chapter 115, SubChapter C 115.242(3)(C)(iii)
30 TAC Chapter 115, SubChapter C 115.242(3)(L)

Description: Failure to maintain the Stage II equipment in proper operating condition.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	August 01, 2011	(920134)
Item 2	February 26, 2013	(1055160)
Item 3	April 04, 2013	(1060001)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
NEBULAR 2000, INC. DBA
KWIK STOP
RN102887502**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2015-1449-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Nebular 2000, Inc. dba Kwik Stop ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 418 Corinth Street in Dallas, Dallas County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 5, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seventeen Thousand Three Hundred Eight Dollars (\$17,308) is assessed by the Commission in settlement of the violations alleged

in Section II ("Allegations"). The Respondent has paid Four Hundred Seven Dollars (\$407) of the administrative penalty and Three Thousand Four Hundred Sixty-One Dollars (\$3,461) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Thirteen Thousand Four Hundred Forty Dollars (\$13,440) of the administrative penalty shall be payable in 35 monthly payments of Three Hundred Eighty-Four Dollars (\$384) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and

(c)(5)(B)(ii), as documented during an investigation conducted on July 7, 2015. Specifically, the delivery certificate expired on June 30, 2013.

2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on July 7, 2015. Specifically, the Respondent received one delivery of fuel without a delivery certificate.
3. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during an investigation conducted on July 7, 2015.
4. Failed to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid reaches a preset level no higher than 95% capacity level for the tank, in violation of 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2), as documented during an investigation conducted on July 7, 2015. Specifically, overfill prevention equipment was not installed.
5. Failed to designate at least one Class A, Class B, and Class C operator for the Facility, in violation of 30 TEX. ADMIN. CODE § 334.602(a), as documented during an investigation conducted on July 7, 2015.
6. Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1)(B), as documented during an investigation conducted on July 7, 2015.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Nebular 2000, Inc. dba Kwik Stop, Docket No. 2015-1449-PST-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order:
 - i. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8; and
 - ii. Begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10.
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815;
 - ii. Install an overfill prevention device for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.51; and
 - iii. Ensure that at least one Class A, Class B, and Class C operator is designated for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.602.
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and

may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

Nebular 2000, Inc. dba Kwik Stop
DOCKET NO. 2015-1449-PST-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Barbara Manera J
For the Executive Director

3/10/16
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Sherwin Allen, E.D.D.
Signature

12/14/2015
Date

Sherwin Allen, E.D.D.
Name (Printed or typed)
Authorized Representative of
Nebular 2000, Inc. dba Kwik Stop

OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.